(5)

No. 91-812

In The

Supreme Court of the United States

October Term, 1991

PACIFIC BELL, PACIFIC TELESIS GROUP, PACIFIC TELEPHONE & TELEGRAPH COMPANY, PACIFIC TELESIS GROUP PENSION PLAN FOR SALARIED EMPLOYEES,

Petitioners,

v.

LANA PALLAS (aka Lana Hubbs), and persons similarly situated,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITIONERS' REPLY BRIEF

C. Douglas Floyd*
William Gaus
Fred W. Alvarez
Kirke M. Hasson
225 Bush Street
Post Office Box 7880
San Francisco, CA 94120-7880
Telephone: (415) 983-1000

Attorneys for Petitioners

*Counsel of Record

Pillsbury Madison & Sutro
Of Counsel

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

ARGUMENT

Respondent's Brief in Opposition attempts to avoid review by obfuscating the real issues before this Court. The Civil Rights Act of 1991, 137 Cong. Rec. 15275 (daily ed. Oct. 25, 1991), does not eliminate or diminish the importance of the issues presented because it addresses a statute of limitations issue while this case involves a substantive issue of what constitutes discrimination. Similarly, respondent's assertion that the seniority system in this case is "facially discriminatory" and assertedly was adopted for an intentionally discriminatory purpose rests on repeated misstatements of the allegations of plaintiff's own complaint.

1. Respondent claims that the Ninth Circuit's decision no longer presents an issue worthy of this Court's attention because "Congress' recent amendment of Title VII through the Civil Rights Act of 1991 . . . has significantly reduced, if not eliminated, the importance of the Ninth Circuit's decision for future Title VII seniority cases." Br. in Opp., p. 8. This assertion is belied by contrary assertions by respondent's counsel elsewhere, which describe the Ninth Circuit's decision as "groundbreaking."[1]

---

[1] Immediately after the ruling, The San Francisco Recorder reported respondent's lawyer's claim that the ruling "could affect many women at the telephone company and at other firms with similar policies." S.F. Recorder, Aug. 13, 1991, p. 12. App. 8a. The report characterized the Ninth Circuit's decision as "the first to apply [this Court's 1986 decision in *Bazemore*] to nonpay benefits." *Id.*

In a November 11, 1991 letter soliciting new members, respondent's lawyers, Equal Rights Advocates, stated that the Ninth Circuit's decision was "groundbreaking." A copy of this letter is appended to this reply brief at App. 1a. In a separate brochure, Equal Rights Advocates noted "hundreds of thousands of women in this country could be affected" by this case. This page is also appended at App. 5a.

In fact, it is clear that the 1991 Amendments have no bearing on this case.[2] As pointed out in the Petition (p. 10 n. 5), section 112 of the 1991 Act overrules this Court's decision in *Lorance v. AT&T Technologies* on a narrow statute of limitations point by allowing a seniority system that was "adopted for an intentionally discriminatory purpose" to be challenged when it is applied to the plaintiff, as well as when it was originally adopted. However, this case does not involve any statute of limitations issue. Rather, under this Court's decisions in *United Air Lines, Inc. v. Evans*, 431 U.S. 553 (1977) and *Teamsters v. United States*, 431 U.S. 324 (1977), Pacific Bell's 1987 decision to base the ERO on long-standing seniority dates was *not a current act of discrimination*. The court of appeals' decision disregards the fundamental distinction between a present act of discrimination, on the one hand, and the present effect of a prior act that results from the application of a seniority system, on the other.

Respondent's claim that this case turns on the question of "what constitutes a timely challenge to a seniority or service crediting system" (Br. in Opp., p. 8) simply underscores the critical error that infected both respondent's claims and the Ninth Circuit's decision upholding them – the inability to see that the question was not whether respondent had made a timely charge of discrimination, but rather whether Pacific Bell's decision to base a benefit on seniority was a discriminatory act at all. The 1991 Act does not address or alter this fundamental

---

[2] Moreover, contrary to respondent's implication (Br. in Opp., p. 11), the 1991 Act should have no bearing on future proceedings in the district court, both because it is irrelevant to the issues in this case, and because the better view is that the Act should not be applied retroactively. *See* Equal Employment Opportunity Commission, Notice No. 915.002, Policy Guidance on Application of Damages Provisions of the Civil Rights Act of 1991 to Pending Charges and Pre-Act Conduct (Dec. 27, 1991).

substantive point in any way,[3] as counsel for respondent have recognized in stressing the importance of this case in other settings. *See* n. 1, *supra*.

The court of appeals' decision thus continues to have an unsettling effect on proper public and private enforcement of the law. That effect is not limited to the Pregnancy Discrimination Act (42 U.S.C. § 2000e(k)) (PDA), or to Title VII. The rationale of the court of appeals, if accepted, would require employers continually to revise existing seniority dates to give retroactive effect to any new legal requirement by reversing long-closed employment decisions that were lawful when they were made. These uncertainties pose a major current problem for employers both within and outside the Ninth Circuit. Employers are presently and continuously required to make benefits and other employment decisions, to establish and amend employee benefit plans, and to make a myriad of employment decisions that are affected by the Ninth Circuit's decision.[4] The uncertainties, risks and deterrence of the use of seniority for such purposes created by the Ninth Circuit's decision cannot adequately

---

[3] Not only are the provisions of the 1991 Act on their face irrelevant to any issue in this case, but the legislative history of that Act also establishes that it makes no alteration in section 703(h)'s protection of the use of seniority as a basis for employment decisions, and does not affect this Court's decisions in *Teamsters* and *Evans*. *See* 137 Cong. Rec. S15477 (daily ed. Oct. 30, 1991) (statement of Senator Dole).

[4] Respondent's suggestion that these uncertainties should be lessened because this case does not involve "competitive status" seniority (Br. in Opp., p. 6) has no legal support and makes no sense. No authority prescribes different rules for different seniority systems, depending on their purpose. It is unimaginable that employers will want to maintain two different seniority dates, with different retroactivity rules, depending on whether the seniority date has a "competitive status" purpose.

be addressed by subsequent litigation in the lower courts.[5]

2. Respondent's arguments addressed to the merits rest on repeated misstatements of the allegations of her own complaint. The crux of respondent's argument is that *Teamsters* and *Evans* are inapposite because, according to respondent, this case does not involve the alleged current discriminatory impact of a facially neutral seniority system, but an existing policy by Pacific Bell to discriminate against pregnant women. Thus, respondent claims that Pacific Bell "*does not* credit towards pension eligibility . . . pre-1979 absences due to pregnancy disability but *does* credit pre-1979 absence due to all other temporary medical disabilities" (Br. in Opp., pp. 12-13 (emphasis added)) and that "[i]t *is* PacBell's policy to exclude from the net credited service calculation all pre-Pregnancy Discrimination Act pregnancy disability leaves." Br. in Opp., p. 4 (emphasis added).[6] Elsewhere she repeatedly

---

[5] Respondent also implies that the 1991 Act is relevant because Pacific Bell's long-standing service crediting system was "adopted for an intentionally discriminatory purpose." Br. in Opp., p. 9. However, there can be no serious claim that petitioners intended to discriminate when, long prior to respondent's 1972 pregnancy leave, Pacific Bell's predecessor companies first adopted the concept of net credited service as a basis for employee benefits. Despite respondent's misleading citation of the complaint (*see* Br. in Opp., p. 9 n.5), the complaint does not so allege. Respondent's citation is to a boilerplate allegation of discrimination appended to her description of Pacific Telephone's 1972 decision to treat her pregnancy leave as a personal leave rather than as a disability leave. However, not only was that decision totally unrelated to petitioners' previous adoption of the seniority system itself, but the 1972 decision could not have been "intentionally discriminatory" because it admittedly was completely lawful when it occurred.

[6] Elsewhere, respondent states that in 1984, Pacific Bell "created various and numerous personnel policies, including policies for calculating employees' service credit" (Br. in Opp.,

(Continued on following page)

describes the net credited service system as "not facially neutral." Br. in Opp., pp. 16-18.

These misleading statements imply that Pacific Bell is claimed to have had a policy or policies overtly making pregnancy a factor in eligibility for the ERO. The undisputed truth, as alleged by respondent's own complaint, is that "at all times relevant herein, defendants maintained a Net Credited Service Date for each of defendants' employees. Defendants used and use each employee's Net Credited Service Date to measure an employee's length of service for purposes of determining entitlement to and eligibility for defendants' various employee benefits and pension plans." First Amended Compl., ¶ 34, ER 8. The 1987 ERO was, as respondent's complaint alleges, "dependent upon an employee's Net Credited Service Date." Compl., ¶ 40, ER 10.

Thus, the repeated references to supposed current "policies" which supposedly discriminate "on their face" are merely respondent's argumentative characterization. The undisputed fact is that respondent has had at all times since 1972 a net credited service date. That net credited service date incorporates the 1972 service crediting decision she wants to reopen. Pacific Bell applied the existing net credited service dates of all employees in determining eligibility for the ERO, as it does for all benefits. In so doing, it did not refer to pregnancy at all.

Respondent misstates the record even more blatantly when she asserts that in 1987 Pacific Bell "chose to *adjust* Pallas' term of employment to exclude her 1972 pregnancy leave but it did not adjust other ERO applicants'

(Continued from previous page)

p. 2), and that "under PacBell's service crediting policies, employees disabled by pregnancy prior to 1979 do not receive service credit . . . " (Br. in Opp., p. 3). In the same vein, respondent asserts that Pacific Bell "drew up criteria for what service would count towards an employee's Net Credited Service date and its pension plans" which allegedly expressly excluded pre-1979 pregnancy leaves. Br. in Opp., p. 15.

terms of employment to exclude their disability leaves from the same period." Br. in Opp., p. 14 (emphasis added). The truth, as admitted by respondent's complaint, is that the exclusion complained of occurred in 1972 and remained unchanged "at all times" thereafter. First Amended Compl., ¶ 34, ER 8. The only thing that occurred in the 1987 ERO offer was Pacific Bell's decision to base eligibility for a benefit on seniority. Because respondent specifically raised the issue, Pacific Bell denied her request to *revise* her long-standing net credited service date to include the period of her 1972 pregnancy disability as she demanded.[7] In the same vein, the "inclusion" in the net credited service dates of other employees' periods of disability did not occur in 1987 but instead occurred whenever those leaves took place.

Respondent is thus attempting to transform an act which occurred in 1972 into an act which occurred in 1987 by equating a 1972 exclusion from respondent's net credited service date with a 1987 decision to exclude her pregnancy leave. She argumentatively alters the tenses of verbs from something the Company "did" to something the Company "does." She similarly speaks as if the eligibility criteria for Pacific Bell's 1987 ERO on their face refer to pregnancy when, as her complaint avers, they refer solely to net credited service.

Pacific Bell *does* treat pregnancy leaves in exactly the same manner as all other disability leaves (as it has at all times since the enactment of the PDA in 1979). Thus, Pacific Bell's policies were in complete accord with the EEOC guidelines quoted by respondent (Br. in Opp., p. 15), which required that following the effective date of

---

[7] As noted in the Petition, p. 5, n. 2, Pacific Bell did make a 1987 adjustment to *include* a period in which she claimed she was able and available for work but was allegedly prevented from working by Pacific Bell's predecessor. This 1987 adjustment is not complained of by respondent, except that it did not go far enough to satisfy her.

the PDA, a company must provide for the accrual of seniority for disability due to pregnancy on the same terms and conditions as for other disabilities. However, nothing in the EEOC's post-PDA guidelines purports to require employers to revise established seniority dates to give retroactive effect to new legal requirements, as respondent contends in this case.[8]

3. Respondent's entire attempt to reconcile the decision of the court of appeals with Congress' protection of seniority systems in section 703(h) and with this Court's decisions in *Teamsters* and *Evans* is based on the erroneous contention that Pacific Bell's seniority system is "not facially neutral." Again, however, respondent has chosen to misstate the undisputed and undisputable facts admitted by her own complaint. While respondent conclusorily asserts that Pacific Bell's ERO is "facially discriminatory," she ultimately is forced to acknowledge that Pacific Bell's benefits "are merely based on an employee's years of service *and do not specifically mention pregnancy*." Br. in Opp., p. 13 (emphasis added). Thus, when respondent's argument is stripped of its rhetorical varnish, it is clear that respondent regards Pacific Bell's seniority system as "facially discriminatory," no matter what it says, simply because it incorporated Pacific Telephone's lawful *1972* decision to treat her pregnancy leave as a personal leave rather than as a disability leave.

No authority supports respondent's all-inclusive definition of a "facially discriminatory" seniority system. If respondent's contention were accepted, then every seniority system that arguably incorporates the results of some previous act of alleged discrimination, including the seniority systems at issue in *Teamsters* and *Evans*,

---

[8] At the very least, the interpretation of the EEOC's guidelines contrary to the obvious import of their language urged by respondent is of such significance to proper enforcement of Title VII that it should not be accepted without requesting the Solicitor General to provide this Court with the government's views.

would be facially discriminatory, and this Court's decisions sustaining the use of seniority for making employment decisions would be meaningless.

Respondent contends that the use of seniority in *Evans* was upheld notwithstanding its present discriminatory effect on women who had married and been discharged as a result because it "treated similarly situated males and females the same" by denying service credit to all former employees, whether they had voluntarily resigned or were forced to resign for a discriminatory reason. Br. in Opp., p. 17. But here, precisely as in *Evans*, *all* employees are denied service credit for periods of personal leave, regardless of whether those personal leaves were on account of pre-1979 pregnancy or for some other reason. Thus, in this case, precisely as in *Teamsters* and *Evans*, the use of seniority may perpetuate the effects of a previous act that is now claimed to have been discriminatory, even though it was lawful or was not challenged when it occurred.[9]

4. Respondent claims that this Court's decision in *Newport News Shipbuilding and Dry Dock Co. v. EEOC*, 462 U.S. 669 (1983) supports her all-inclusive definition of "facially discriminatory." In *Newport News*, however, the policy said on its face that "[m]aternity benefits for the wife of a male employee" would be different from disability benefits. 462 U.S. at 672. In *Arizona Governing Committee v. Norris*, 463 U.S. 1073 (1983) the plan was challenged, because, by its terms, "a man receives larger

---

[9] Respondent argues that other seniority systems will not be affected as long as they are not facially discriminatory. The point of this case, however, is that if incorporation of a long-past act into a seniority date makes Pacific Bell's seniority system "facially discriminatory" unless all previous decisions that affect seniority are "correct" judged by subsequently enacted legal standards, then all seniority systems are "facially discriminatory" and use of all such systems is in jeopardy.

monthly payments than a woman who deferred the same amount of compensation and retired at the same age, because the [actuarial] tables classify annuitants on the basis of sex." 463 U.S. at 1077. In *Los Angeles Dept. of Water & Power v. Manhart*, 435 U.S. 702 (1978) the employee "required its female employees to make larger contributions to its pension fund than its male employees." 435 U.S. at 704. In *International Union UAW v. Johnson Controls*, ___ U.S. ___, 111 S.Ct. 1196 (1991) the employer had a written policy that "women who are pregnant or who are capable of bearing children will not be placed into jobs involving lead exposure . . . . " 111 S.Ct. at 1200. Thus, in all of the cases cited by respondent, an employer's current plan expressly and in specific terms drew a distinction based on the forbidden criterion. In this case, Pacific Bells's ERO relies solely on seniority and, on its face, draws no such distinction.

5. Respondent's treatment of the court of appeals' decision that alleged discrimination in the design of an ERISA benefit plan constitutes a fiduciary breach also attempts to obfuscate the issue by misstating the record. In particular, respondent asserts that all that the court of appeals held was that respondent had alleged that Pacific Bell misinterpreted the terms of the ERO by determining to base eligibility for benefits on net credited service (rather than some other measure of service). Br. in Opp., pp. 25-26. She asserts that "Pallas challenges PacBell's insistence that eligibility under the ERO depends upon a Net Credited Service date." *Id.* But respondent's own complaint clearly alleges that in 1987, Pacific Bell adopted the ERO "pursuant to which employees with certain amounts of net credited service, *as reflected by their net Credited Service Date*, were eligible to retire and receive pension benefits. The ERO included several plan options, *eligibility for each of which was dependent upon an employee's Net Credited Service Date.*" *Id.*, ¶ 40, ER 10 (emphasis added).

Thus, while respondent now seeks to avoid review by this Court by describing this case as nothing more than an alleged "misinterpretation" of the ERO by Pacific Bell, the case that respondent actually alleged specifically claimed that the ERO itself, like Pacific Bell's other benefits plans, explicitly based eligibility for benefits on an employee's net credited service and sought to change this provision of the plan. Moreover, as pointed out in the petition, when the district court offered respondent an opportunity to amend her complaint to properly allege a claim that Pacific Bell had misinterpreted the terms of the ERO, respondent declined that opportunity. As demonstrated in the Petition (pp. 24-30) the court of appeals' decision that in designing its plan to base eligibility for the ERO on net credited service, Pacific Bell committed an act of "discrimination" that violated the fiduciary duty provisions of ERISA conflicts with the decisions of other circuits and warrants review by this Court.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

C. Douglas Floyd*
William Gaus
Fred W. Alvarez
Kirke M. Hasson
225 Bush Street
Post Office Box 7880
San Francisco, CA 94120-7880
Telephone: (415) 983-1000

Attorneys for Petitioners

*Counsel of Record

Pillsbury Madison & Sutro
Of Counsel

APPENDICES

TABLE OF CONTENTS

APPENDIX

EQUAL RIGHTS ADVOCATES
1663 MISSION ST., STE. 550
SAN FRANCISCO CA 94103
415/621-0672
FAX: 415/621-6744

November 11, 1991

Dear Friend,

We were delighted that you were able to join Equal Rights Advocates at its Annual Luncheon in June where we honored three remarkable Bay Area women – Ina F. Dearman, May S. Kurka and Helen Rodriguez-Trias, M.D. – for their impressive contributions to community service, the arts and health care. These women are an inspiration to us all, and their courage and commitment motivate ERA's dedication to the ongoing struggle against sex and race discrimination.

As you probably know, ERA has successfully worked to ensure equal opportunity for women and minorities for more than 17 years through legal action in the courts and public policy arena, as well as public education and media efforts. But one merely has to glance at the paper or listen to the evening news to know that the rights of women are in grave danger indeed. An increasingly conservative judiciary is actively dismantling the foundation of federal anti-discrimination law as well as eroding women's reproductive rights. And the recent disclosure of Professor Anita Hill's charges of sexual harassment against Supreme Court nominee Clarence Thomas, which highlighted the issue of sexual harassment in the workplace as never before, has resulted in a dramatic increase

for advice and counseling, not only here at ERA but at women's rights organizations across the country.

The fact is, recent events have greatly increased the demand for ERA's services across the board. In order to meet these critical needs and to maintain our ability to respond to future crises, ERA simply must expand its base of support. **That is why I am writing you today to ask you to consider becoming a member of Equal Rights Advocates.**

When you become a member of ERA, you will join many other concerned citizens throughout the country who are fighting to counter the conservative shift in our country's political climate and to tenaciously hold the line in the fight for equality under the law for women and minorities. Thanks to their loyal support, ERA has been able to persevere on many critical fronts and achieve several significant victories during this past year alone:

** EEOC & Castrejon v. Tortilleria La Mejor – This case is the first in the nation to address the rights of undocumented workers under Title VII of the Civil Rights Act since the passage of the 1986 Immigration Reform and Control Act, which prohibits the employment of undocumented workers. On February 20, 1991, a federal district court ruled in ERA's favor, handing down a landmark decision which grants undocumented workers legal protections against employers who violate labor and civil rights laws.

** Pallas v. Pacific Bell – On August 12, 1991, the Ninth Circuit Court of Appeals ruled in favor of ERA client Lana Pallas, who is suing Pacific Bell for sex discrimination because the phone company refused to credit toward her retirement the personal leave she was forced (by company policy) to take off for pregnancy

– while crediting other temporary medical disability leaves. The court ruled that PacBell's policy was illegal under federal and California laws, which forbid treating pregnancy disability leaves differently from other medical disability leaves. This groundbreaking lawsuit is an important first step toward eradicating the "second stage" of pregnancy discrimination which a significant number of older working women will face as they become eligible for retirement.

** "Little Hoover" Commission Hearings on Women in the Trades – ERA was instrumental in persuading California's "Little Hoover" Commission to hold public hearings to investigate allegations that the state's Division of Apprenticeship Standards misused state funds by failing to exercise its responsibility to integrate women into apprenticeship programs in the building trades. ERA's efforts helped to focus public attention on the lack of representation of women in the trades, with feature articles appearing in numerous newspapers including the *New York Times* and *Los Angeles Times*, and prompted the formulation of effective public policy strategies to reverse this trend.

As these victories demonstrate, ERA's litigation strategies bolstered with effective public education and media efforts enable us to successfully challenge unfair laws, regulations and employment practices that systematically discriminate against women and minorities.

And with your help today, ERA will be able to continue its efforts on behalf of women in the year ahead. For example, ERA's lawyers are currently investigating claims that the San Francisco Fire Department has failed to meet its obligation under a court-approved consent decree to provide women firefighters with necessary equipment and properly-fitting uniforms. Our case

docket also includes a lawsuit to obtain compensatory damages for more than a dozen women workers, many of whom were the victims of sexual harassment in the workplace. These individuals have already won employment discrimination cases before the California Fair Employment and Housing Commission (FEHC), only to have their awards denied by a subsequent California Supreme Court ruling which stripped FEHC of its authority to award compensatory damages.

During ERA's early years, the courts were an arena to which women and minorities could affirmatively turn to guarantee their rights. The current conservative trend in the courts, however, have made it critical that we find more creative and effective strategies for battling sex and race discrimination in this country. That is why becoming a member of Equal Rights Advocates right now is so important. Your support will help us remain a strong, viable and creative force as we strive to win full equality for all women. **I hope we can count on your support today.**

Sincerely,

/s/ Nancy Davis
Nancy L. Davis
Executive Director

P.S. I have enclosed a complementary copy of ERA's quarterly newsletter, which contains highlights of the 1991 Annual Luncheon as well as updates on some of the important cases ERA is pursuing. I trust that you will find much within its pages to warrant your support of our work.

Equal Rights Advocates, Smiles to the Victors, Stories of Six Courageous Women: Lana Pallas.

Riverside, California, in 1972 may not strike you as likely setting for a small revolution – unless you know Lana Pallas.

The local phone company certainly didn't. As far as company officials knew, she was one of the many women who came out of high school in 1967 with a job application in hand. Lana needed a job, and her mom, who had worked for the phone company her entire life, urged it on her as a place to work that offered safety and security.

The company hired her into its traditional entry-level job for young women, information operator. She worked on whatever shift she was assigned to, took home a biweekly paycheck, and soon moved into other areas of the phone company's operation. Over the next few years Lana was a line assigner for cable assignments, an installer, and a central office staffer. Along the way she got married and in 1972 decided to have a child.

Twenty years ago, pregnant women were dealt with very differently than they are today. It was assumed they would take time off, but typically they were placed on unpaid personal leaves rather than on medical disability leaves. When Lana was ready to have her baby and was given the leave papers to sign, she refused, saying, "I do not want to be forced to take an unpaid personal leave. I'll just call in sick and come back to work as soon as possible."

The company was insistent. But so was Lana. She refused again and again, until finally the company forced her supervisor to sign the papers for her.

Knowing that what the phone company was doing was wrong, she went to the regional office of the Equal Employment Opportunity Commission, filed a complaint, and was told that, indeed, the company policy was discriminatory to women. Men who were temporarily disabled were able to take disability leave – why should women temporarily disabled due to pregnancy be treated differently and forced to take personal leave?

Unfortunately, Lana never followed through with the EEOC claim. She took a week's vacation, went into labor, and her daughter Brandi was born. After six weeks, her doctor released her to go back to work, but the phone company said no. She was forced to stay home an additional two weeks before the company would let her come back to work.

Little did Lana know that more than a decade later this incident would come back to haunt her. She stayed with the phone company, eventually moving to Northern California and going into management. In 1987, the company offered management an early retirement program, and Lana applied, thinking that it might be time for a new career. But she ran into a problem: Her 1972 pregnancy-related forced personal leave did not count toward "net service credit," although medical disability leaves were counted. As a result, she was three days short of the 20 years of service she needed to qualify for the retirement program.

This time Lana knew she was going to fight back. With Equal Rights Advocates' help, Lana brought a lawsuit in federal court, and recently won a 9th Circuit decision reversing the district court that had dismissed

her case. The appeals court ruled that the company's retirement plan was discriminatory and illegal because it did not count toward "net service credit" personal leaves that were actually temporary disability leaves due to pregnancy while it credited all other medical disability leaves.

Lana feels vindicated at last. People are calling to congratulate her and tell her their stories of woe as well. Right after she won her appeal, a colleague went so far as to leave a ten-dollar bill on her chair at work with a note saying. "From a grateful Pacific Bell employee – have an [sic] nice lunch on me."

> Hundreds of thousands of women in this country could be affected by the lawsuit brought by Equal Rights Advocates and its co-counsel objecting to Pacific Bell's policy that denied Lana Pallas her early retirement because of a pregnancy leave she was forced to take in 1972. This groundbreaking lawsuit challenges the "second stage" of pregnancy discrimination that a significant number of older working women will face as they become eligible for retirement and other benefits. Indeed, since the 9th Circuit ruled that Pacific Bell's policy was discriminatory and illegal, ERA has received many phone calls from women who believe they have been victims of similar policies.

THE RECORDER, TUESDAY, AUGUST 13, 1991, PAGE 12

PacBell Manager Wins Pregnancy Leave Ruling

ASSOCIATED PRESS

Women who were denied pregnancy job leave before a 1979 federal pregnancy discrimination law was passed were given a boost toward equality in pension benefits Monday.

The Ninth Circuit U.S. Court of Appeals ruled 2-1 that a female employee of Pacific Bell was entitled to the same retirement credit for a pre-1979 "personal" leave during pregnancy that other employees were given for disability leaves.

A lawyer for the woman in the case said the ruling could affect many women at the telephone company and at other firms with similar policies.

"My understanding is it's fairly standard for employers to exclude time taken for pregnancy leave prior to 1979" when calculating retirement credit, said attorney Maria Blanco of Equal Rights Advocates.

She said the ruling, the first on the issue by a federal appellate court, was "very uplifting . . . in this anti-civil rights climate that federal courts seem to be in."

Pacific Bell had no immediate comment.

Pacific Bell, like many other companies, did not grant disability leaves for normal pregnancies before 1979, when the Pregnancy Discrimination Act required employers to allow the same leaves and other benefits for pregnancies that were provided for other work disabilities.

The company now provides pregnancy disability leaves. But when it offered management employees with 20 years of service an early retirement program in 1987, Pacific Bell did not credit them with time spent on leave for "personal" matters, as pregnancy leaves were classified before 1979. Workers were credited for periods of disability leave.

The policy left Lana Pallas, a supervisor in the company's San Ramon office, three to four days short of the 20-year standard by the company's cutoff date because of a pregnancy leave she had taken in 1972. Her civil rights suit was dismissed by U.S. District Judge D. Lowell Jensen but reinstated by the appeals court.

Although Pacific Bell violated no law by denying pregnancy leave before 1979, the company "is liable for its decision to discriminate against Pallas in 1987 on the basis of pregnancy," said the opinion by Judge Mary Schroeder.

She said the program "facially discriminates against pregnant women" by treating them less favorably than other employees who took leaves for temporary disabilities before 1979. Because of that discrimination, Schroeder said, the program is not saved by U.S. Supreme Court rulings upholding employer seniority systems that harm a particular group but are neutral on their face.

She cited a 1986 Supreme Court decision prohibiting employers from maintaining pay disparities that stemmed from workplace racial segregation before passage of the Civil Rights Act. Blanco, Pallas' lawyer, said Monday's ruling was the first to apply the 1986 decision to nonpay benefits.

Judge Jerome Farris endorsed the opinion. In dissent, U.S. District Judge Edward Dumbauld of Pennsylvania, sitting by assignment, said the company had used a legitimate and legally authorized seniority system.

Pallas' grievance "is one that belongs to history," Dumbauld wrote. "It is not a current violation of law."

Blanco said the ruling was aimed at a specific retirement program, but its reasoning appeared to apply to any retirement benefits that treat pre-1979 pregnancy leaves unequally. She said she would seek to broaden the suit to cover other women at Pacific Bell who were affected by the policy.

Pallas, who is not eligible for the regular retirement program until 1997, remains with the company, Blanco said.